



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/019,481	04/04/2002	Kazuhiro Takagi	AM100246-00	1417
26474	7590	11/16/2005	EXAMINER	
NOVAK DRUCE DELUCA & QUIGG, LLP 1300 EYE STREET NW SUITE 400 EAST WASHINGTON, DC 20005			LEVY, NEIL S	
			ART UNIT	PAPER NUMBER
			1615	

DATE MAILED: 11/16/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/019,481	Applicant(s) TAKAGI ET AL.	
	Examiner NEIL LEVY	Art Unit 1615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 September 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,10 and 13-17 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,10,13-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☒ Claim(s) 1,10 and 13-17 are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Election/Restrictions

The restriction/election of species requirement is maintained in this RCE, with claim 15, of new claims (of 3/19/04) 13- 17 also considered to be within the elected groups & species, as argued by applicant's attorney.

Claim Rejections - 35 USC § 102

Claims 1,10,13,14,16 & 17 stand rejected under 35 U.S.C. 102(e) as being anticipated by Treacy et al. -6342518. Treacy claims priority of 3/12/99. The instant invention claims priority to 6/28/00.

See data showing efficacy @ only 0.1ppm of Ia (table 1)- Data show artisan can increase dose as required to obtain effects desired.

Applicant's arguments are not persuasive, since the instant claims are not in consisting mode, limiting I-1 as the only active.

Claim Rejections - 35 USC § 103

Claims 1,10,13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takagi et al 5543573 and Treacy et al 6342518.

.Takagi too, shows the instant hydrazine compounds (table 3, for example A0261; example 14), are applied to control insect pests, inclusive of agricultural, forest & sanitary insects, all unspecified(line 6-11, col. 62), IN ADDITION to controlling the specified pests @ col. 62.

Application rates are 0.01-50% of compositions (col. 64, lines 32-38) & @ 0.1- 5 kg/10 acres, as is desired & under conditions determinable by artisan in accord with known factors of consideration in effecting control of insect pests (col. 64, lines 38-56). the forest & sanitary insects to include ants, termites, & application to houses to therefore be protective of them.

Treacy also (above) provides the instant compounds effective to control ants & termites(col. 7, lines 33 –35) indicating they are in the category of public health pests, the Takagi sanitary pests.Treacy does not show rate of application in the field. Takagi shows the rate at which to apply these comounds (col. 64, lines 32-38).

It would have been obvious to a person of ordinary skill in the art at the time the invention was made desiring to utilize a sanitary or forest insecticide control means, to use any of art recognized means, as of Treacy, Takagi. Motivation to use a specific compound is shown by Treacy, the Ia compound is superior. Exact ratios and amounts thereof are within the purview of one in the art to attain, in order to optimize desired effects, such as control of specific insects, composition compatability, stability.

All the critical elements of the instant are disclosed. The amounts and proportions of each ingredient are result effective parameters chosen to obtain the desired effects. It would be obvious to vary the form of each ingredient to optimize the effect desired, depending upon the particular pest of interest, reduction of toxicity, cost

Art Unit: 1615

minimization, enhanced, and prolonged, or synergistic effects, with consideration of pesticide ingredient compatibility.

There is no non obvious and/or unexpected results obtained since the prior art is well aware of the use of insecticides for control of insects and the use of additives for the functionality for which they are known to be used is not a basis for patentability. The selection of active is a result effective parameter determinable by artisan as desired for purposes of treating specific pests.

Applicant's arguments filed 9/27/05 have been fully considered but they are not persuasive. Applicant argues (p. 5 of arguments) "obvious to try" is not obvious, however, applicant also argues all the Isoptera, Hymenoptera, Orthoptera & Psocoptera orders are within the instant method, requiring only testing to determine whether or not they fall within the confines of the claimed invention. Examiner sees that construct to be within the cited prior art, which also teaches the instant compounds effective in the instant application methods to control the insect pests falling within the Orders of ants & termites. As to Harrison & Toki, examiner agrees the instant hydrazines as now claimed are at best similar; the references cumulative as to methods of ant & termite control.


The test report was not readable, smudgy, but as far as could be determined would not seem to mitigate against the known compounds applied @ known rates to control termites.

Art Unit: 1615

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NEIL LEVY whose telephone number is 571-272-0619. The examiner can normally be reached on Tuesday-Friday, 7 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, THURMAN PAGE can be reached on 571-272-0602. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


NEIL LEVY
Primary Examiner
Art Unit 1615
